

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.BALAKRISHNAN NAIR

TUESDAY, THE 10TH APRIL 2007 / 20TH CHAITHRA 1929

OP.No. 12863 of 2001(F)

PETITIONER:

**M/S. MBR MEDICAL TRUST, `THAMASA',
PALARIVATTOM, KOCHIN - 682 025,
REPRESENTED BY ITS MANAGING TRUSTEE
MRS. C.K. NALINI.**

BY ADV. SRI.V.V.SIDHARTHAN.

RESPONDENTS:

- 1. THE THAHASILDAR, KANAYANNUR TALUK,
ERNAKULAM.**
- 2. STATE OF KERALA, REPRESENTED BY CHIEF
SECRETARY TO GOVERNMENT,
THIRUVANANTHAPURAM.**
- 3. THE REVENUE INSPECTOR,
KANAYANNUR TALUK,
ERNAKULAM.**

BY SR. GOVERNMENT PLEADER SRI. MOHAMMED RAFIQ.

**THIS ORIGINAL PETITION HAVING BEEN FINALLY HEARD
ON 10/04/2007, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:**

ORDER ON C.M.P. NOS. 20432/2001 & 30694/2001 IN O.P. NO. 12863/2001

DISMISSED

10/04/2007.

SD/- K. BALAKRISHNAN NAIR, JUDGE.

APPENDIX

PETITIONER'S EXHIBITS:

EXT.P.1: COPY OF THE RETURN FILED BY THE PETITIONER BEFORE THE R.1.

EXT.P.2: COPY OF THE ASSESSMENT ORDER NO. B-5/17134/99 DT. 29/04/95 ISSUED BY R.1. TO THE PETITIONER.

EXT.P.3: COPY OF THE ORDER NO. 18586/H3/99/TD. DTD. 28/10/99 ISSUED BY GOVERNMENT OF KERALA TO THE PETITIONER.

EXT.P.4: COPY OF THE MEMO NO. B3-17134/94 DT. 05/11/99 ISSUED BY R.1. TO THE PETITIONER.

EXT.P.5: COPY OF THE RECEIPT DT. 26/11/1999 ISSUED BY R.1. TO PETITIONER.

EXT.P.6: COPY OF THE RETURN DT. 25/01/2001 FILED BY THE PETITIONER BEFORE THE R.1.

EXT.P.7: COPY OF THE NOTICE NO. 4/22-1 DT. 22/01/2001 ISSUED BY R.3. TO THE PETITIONER.

EXT.P.8: COPY OF THE ASSESSMENT ORDER NO. B-2/1424/2001 DTD. 01/03/2001 ISSUED BY THE R.1. TO THE PETITIONER.

EXT.P.9: COPY OF THE DEMAND NOTICE NO. B2-1424/2001 DTD. 01/03/2001 ISSUED BY THE R.1. TO THE PETITIONER.

EXT.P.10: COPY OF THE RECEIPT ISSUED BY THE VILLAGE OFFICER TO THE PETITIONER.

//TRUE COPY//

prv.

K.BALAKRISHNAN NAIR, J.

O.P. NO. 12863 OF 2001-F

JUDGMENT

The petitioner is a public charitable trust. It has constructed a multi-storeyed building to house its hospital. The construction of the ground floor and first floor to third floor was completed on 21.5.1992. The building tax was assessed and payment was also made. Now, it is a seven storeyed building. The remaining floors were constructed and completed in 1999. Thereupon, the assessing authority made a fresh assessment of the building tax, taking into account the entire plinth area. Ext.P8 is the assessment order and Ext.P9 is the consequential demand notice. This Original Petition was filed, challenging Exts.P8 and P9. The assessment as above was made under Section 5(4) of the Building Tax Act, which reads as follows:

“5. Charge of building tax:- (1)

(4) Where the plinth area of the building, the construction of which is completed after the appointed day is subsequently increased by new extensions or major repair or improvement, building tax shall be computed on the total plinth area of the building including that of the new extension or repair or improvement and credit shall be given to the tax already levied and collected, if any, in respect of the building before such extension, or repair or improvement.”

So, the petitioner challenges the constitutional validity of Section 5(4) also.

It submits, since the floors up to the third floor were already assessed as early as in 1992, it is arbitrary and illegal to reopen those assessments and make fresh assessment for those floors also. Since Section 5(4) permits such a course of action, the said provision is arbitrary and unconstitutional, it is submitted.

2. Heard the learned counsel on both sides. Going by Section 5(4), I find nothing illegal with the course adopted by the respondents. The challenge to the constitutionality of Section 5(4) is plainly untenable, as the petitioner has not made out any case in the O.P to sustain the challenge against the statutory provision. When a provision is found to be inconvenient, it is challenged by making a prayer to that effect. But, based on such slender grounds, this Court cannot interfere with a plenary legislation. Therefore, the writ petition is liable to be dismissed. The learned counsel for the petitioner points out that the plinth area given in Ext.P8 is not correct. But, I find that no ground has been raised regarding the plinth area. At any rate, it is a disputed question of fact, which cannot be resolved in this original petition. Accordingly, it is dismissed. The

statutory remedy, if any, available to the petitioner to challenge the computation of the plinth area will not be affected by the dismissal of this original petition.

10th April, 2007.

K.BALAKRISHNAN NAIR, JUDGE.

Nm/

K.BALAKRISHNAN NAIR, J.

O.P. NO.12863/2001-F

JUDGMENT

10.4.2007.